MOHAMAD SHAHID AHMAD v. DATO' MOHAMAD FAZIN MAHMUD & ORS

HIGH COURT MALAYA, KUALA LUMPUR
KAMALUDIN MD SAID J
[JUDICIAL REVIEW NO: WA-25-223-11-2016]
26 JULY 2017

ADMINISTRATIVE LAW: *Judicial review – Application against order issued by Prevention of Crime Board ('Board') – Police supervision order – Procedures before Board could issue direction that applicant be registered under s. 12(1) of Prevention of Crime Act 1959 ('PCA') – Whether complied with – Whether Board had satisfied itself under s. 15(1) of PCA before making direction to order police supervision – Whether Board abused s. 15(1) of PCA – Whether police supervision order ought to be set aside – Rules of Court 2012, O. 53*

PREVENTIVE DETENTION: *Police supervision order – Procedure – Whether complied with – Issuance of direction that applicant be registered under s. 12(1) of Prevention of Crime Act 1959 ('PCA') – Whether Prevention of Crime Board satisfied itself under s. 15(1) of PCA before making direction to order police supervision – Whether abuse of s. 15(1) of PCA – Whether police supervision order ought to be set aside*

The applicant was remanded following his arrest by the police under s. 3(1) of the Prevention of Crime Act 1959 ('the PCA'). He was brought before an inquiry officer who then submitted his findings to the Prevention of Crime Board ('the Board'). After considering the findings, the Board made its decision and since the applicant was satisfied and made no request for review, the Board confirmed the said findings. The Board then directed the Registrar to enter the applicant's name and particulars in the Register under s. 12(1) of the PCA. The Board also issued a police supervision order ('the PSO') on the applicant for a period of two years, ordering the applicant (i) to reside in the area of Mukim Petaling, Daerah Petaling, Negeri Selangor; and (ii) to comply with certain conditions in the PSO which required him to, *inter alia*, report to the officer-in-charge of the police district every day from 8am to 6pm and he was not allowed to leave the area without the written authority of the State Commissioner of Police. Hence, the present judicial review under O. 53 of the Rules of Court 2012. In support of his application, the applicant argued that (i) the Board wrongly exercised its power under s. 15(1) of the PCA as s. 15 of the PCA is a stand-alone provision where the powers of the Board under the said section requires the Board to exercise its discretion before making any direction to order police supervision. The respondent argued that the issue raised by the applicant bore no merit and was a non-starter as the affidavit of the Deputy Chairman of the Board clearly stated that the Board was satisfied that it was necessary that control and supervision be exercised over the registered person but that

it was not necessary to detain him. According to the respondents, based on this explanation, it was clear that the procedure under s. 15(1) of the PCA was complied with.

Held (allowing application):

(1) Section 15(1) of the PCA is a separate section which provides for the procedure to be followed before the Board could issue the direction that applicant, as registered person under s. 12(1) of the PCA be ordered with PSO. The words 'The Board may by order direct …' and '… if the Board is satisfied …', read in the entire context of s. 15(1) of the PCA, means that the section requires the Board to exercise its discretion and must be satisfied that it was necessary that control and supervision be exercised over the applicant. The literal meaning of the words used in s. 15(1) of the PCA is that, it was only after the Board had satisfied itself that it may direct, by order, that the applicant shall be subject to police supervision. The Board, in invoking s. 15(1) of the PCA and ordering the applicant with the PSO without satisfying itself of such requirement under s. 15(1) of the PCA, failed to comply with the said procedure. (paras 24 & 25)

(2) The PSO should contain, at least, some indication of what the Board had in mind. In this case, the PSO merely stated that in exercise of the power given under s. 15(1) of the Act but did not contain any indication that the Board had satisfied itself, or any indication that it had done so, and comply with s. 15(1) of the PCA. What the Board did was to import the whole of s. 15(1) of the PCA into the order and by that sub-section from which its power derived, ordered the applicant to be subject to police supervision. By doing that, the Board, instead of complying with the procedure, the prerequisite of which required its application of mind, had abused s. 15(1) of the Act. Furthermore, when the PSO did not show any indication that the Board had satisfied itself, the benefit of doubt must be decided in the applicant's favour that the Board did not do so. The PSO issued on the applicant was set aside and the applicant was released from the said PSO. (paras 25, 27, 31, 38 & 43)

(3) The affidavit was conflicting with the PSO issued by the Board. There was nothing mentioned in the PSO that the Board Deputy Chairman had satisfied himself as what he had stated in the affidavit. It was obvious that the explanation came later and the affidavit could not correct the PSO which was made earlier. (para 29)

Case(s) referred to:

Chong Kim Loy v. Timbalan Menteri Dalam Negeri Malaysia & Anor [1990] 1 CLJ 61; [1990] 1 CLJ (Rep) 731 HC ***(refd)***

Eastern & Oriental Hotel (1951) Sdn Bhd v. Ellarlous George Fernandez & Anor And Another Case [1988] 2 CLJ 734; [1988] 1 CLJ (Rep) 50 SC ***(refd)***

Govalan Arujuna v. Pengerusi, Lembaga Pencegahan Jenayah & Ors [2016] 1 CLJ 772 HC ***(dist)***

Guan Teik Sdn Bhd v. Hj Mohd Noor Hj Yakob & Ors [2000] 4 CLJ 324 CA ***(refd)***
Murugan Supparamaniam v. Timbalan Menteri Dalam Negeri, Malaysia & Ors [2010] 4 CLJ 405 FC ***(refd)***
Re Datuk James Wong Kim Min; Minister of Home Affairs, Malaysia & Ors v. Datuk James Wong Kim Min [1976] 1 LNS 129 FC ***(refd)***
SK Tangakaliswaran Krishnan v. Menteri Dalam Negeri, Malaysia & Ors [2009] 6 CLJ 705 FC ***(refd)***
Tindok Besar Estate Sdn Bhd v. Tinjar Co [1979] 1 LNS 119 FC ***(refd)***
Yuill v. Yuill [1945] P 15 ***(refd)***

Legislation referred to:
Federal Constitution, art. 5(2)
Prevention of Crime Act 1959, ss. 3(1), 4(1)(a), (2)(a), 6, 9(3)(d), 10(2), 11, 12(1), 15(1), 19A
Rules of Court 2012, O. 53

For the applicant - Gobind Singh & Mohd Haijan; M/s Gobind Singh Deo & Co
For the respondents - Lee Wai Yi; FC

Reported by Najib Tamby

JUDGMENT

Kamaludin Md Said J:

Backgrounds

[1] The applicant was arrested by the police on 30 June 2016 under s. 3(1) of the Prevention of Crime Act 1959 ("the PCA"). He was remanded under ss. 4(1)(a) of the PCA for 21 days from 1 July 2016 to 21 July 2016. On 21 July 2016 he was taken before the Magistrate for further remand for 38 days under s. 4(2)(a) of the PCA commencing 21 July 2016 until 27 August 2016.

[2] The applicant was brought before an inquiry officer under s. 6 of the PCA and the inquiry on the applicant's detention was held on 4 August 2016 by the inquiry officer under s. 9 of the PCA. The finding and reasons of the inquiry officer under s. 10(2) of the PCA was submitted to the Board and a copy of it was served on the applicant. The Board considered the finding of the inquiry officer and made decision under para. (3)(b) and a copy of its decision was forwarded to the applicant. It is not disputed that the applicant was satisfied with the finding of the inquiry officer under s. 10(2) of the PCA and did not request the Board to review the finding or decision under s. 11 of the PCA as stated in Borang I signed by him dated 8 August 2016. The Board confirmed the finding of the inquiry officer and satisfied that the applicant is a member of the registrable categories prescribed in Part II of the First Schedule and that in the interest of public order or security to do so, has directed the Registrar to enter the applicant's name and the applicant's particulars in the Register under s. 12(1) of the PCA.

[3] It is not disputed that the applicant is a "registered person" under s. 12(1) of the PCA, the Board in exercising its power under s. 15(1) of the PCA then issued a Police Supervision Order dated 26 August 2016 on the applicant for a period of two (2) years effective from 26 August 2016 until 25 August 2018. The applicant was ordered to reside in the area of Mukim Petaling, Daerah Petaling, Negeri Selangor.

[4] Aggrieved by the order of the Board, the applicant filed leave application for judicial review under O. 53 of the Rules of Court 2012 and supported by his own affidavit to challenge the Board's order on ground that the order was issued not in accordance with the provisions of the PCA therefore, the applicant alleged that the order of police supervision directing him to reside in Mukim Petaling, Daerah Petaling, Negeri Selangor with certain conditions is not proper and unlawful.

[5] The applicant's leave application was granted by this court and the substantive application for judicial review was heard on 17 July 2017.

[6] The applicant's counsel in his written submission proposed to raise two principle issues relating to procedures under ss. 19A and 9(3)(d) of the PCA which the applicant alleged the respondents has failed to prove that the procedures had been followed. However, during the oral submission Mr. Gobind Singh, counsel for the applicant, indicated to this court that he would instead prefer to submit on a new issue of non-compliance of procedure under s. 15(1) of the PCA and in respect of the order issued by the Board.

[7] His point is that the Board had wrongly exercised its power under s. 15(1) of the PCA in directing the police supervision order dated 26 August 2016 against the applicant. In arguing this point, he urged this court to look at the police supervision order in encl. 3 where the order is stated as follows:

> BAHAWASANYA Lembaga Pencegahan Jenayah berpuashati bahawa penama telah didaftarkan oleh Pendaftar Penjenayah menurut subseksyen 12(1) Akta Pencegahan Jenayah 1959, dan menurut kuasa-kuasa yang diberi kepada Lembaga Pencegahan Jenayah oleh subseksyen 15(1) Akta yang sama, Lembaga Pencegahan Jenayah, adalah dengan ini memerintahkan supaya …

[8] It was Mr. Gobind's submission that the highlighted words in the order shows that the Board had not followed the procedure under s. 15(1) of the PCA. He submitted that s. 15 is a stand-alone provision where the powers of the Board under the section requires the Board, before making any direction to order police supervision over the applicant, must exercise its discretion. In other words, Mr. Gobind's point is that under s. 15(1) of the PCA, the Board must satisfy itself that it is necessary that control and supervision be exercised over the registered person ie, the applicant, before he can direct that the registered person ie, the applicant, be ordered to be subject to the supervision of the police.

[9] This is the main issue before this court and this issue merits consideration. The court will hear full submission on the point of law raised by Mr. Gobind and also to hear the reply from learned Federal Counsel acting for the respondents.

The Law

[10] In this case the applicant had been issued with police supervision order which required him to reside in Mukim Petaling, Daerah Petaling, Negeri Selangor for a period of two years commencing from 26 August 2016. During the duration of the order, the applicant must comply with the conditions stated in paras. (a) to (f) in the Order which *inter alia* required him to report to the Officer In-Charge of the Police District (OCPD) every day from 8am to 6pm and he cannot leave the area without the written authority of the State Commissioner of Police (CPO). In circumstances of such conditions, his movement is being restricted, thus violates his personal liberty under art. 5 of the Federal Constitution.

[11] The law applicable in dealing with the applicant's personal liberty is similar to the law in application for writ of *habeas corpus*. The applicant in this case complaints that he has been unlawfully restricted and that had affected his personal liberty under art. 5(2) of the Constitution, the court is to inquire into the complaint and, unless satisfied that the restriction is unlawful, shall set aside the restriction order and he shall be set free.

[12] In any *habeas corpus* application, the burden is on the detaining authority to prove that the detention of the applicant is lawful (see *SK Tangakaliswaran Krishnan v. Menteri Dalam Negeri, Malaysia & Ors* [2009] 6 CLJ 705 and *Murugan Supparamaniam v. Timbalan Menteri Dalam Negeri, Malaysia & Ors* [2010] 4 CLJ 405; [2010] 4 MLJ 488). In *Re Datuk James Wong Kim Min; Minister of Home Affairs, Malaysia & Ors v. Datuk James Wong Kim Min* [1976] 1 LNS 129; [1975] 2 MLJ 244 at pp. 250 and 251 (MLJ), the Federal Court had held that the detention without trial which deprived the detained person of his fundamental liberties, the procedures relating to the detention under the statutes of which he is detained must be strictly followed.

> Preventive detention is the detention of a person without trial as opposed to punitive detention where a person is detained after a trial in a court of law in which he is proved to have committed an offence punishable under certain provisions of the penal law.
>
> Preventive detention is therefore, a serious invasion of personal liberty. Whatever safeguard provided by law against the improper exercise of such power must be zealously watched and enforced by the court. *In a matter so fundamental and important as the liberty of the subject, strict compliance with statutory requirements must be observed in depriving a person of his liberty.* The material provisions of the law authorizing detention without trial must be strictly construe and safeguards which the law deliberately provides for the protection of any citizen must be literally interpreted.

A Where the detention cannot be held to be in accordance with the procedure established by law, the detention is bad and the person detained is entitled to be released forthwith. Where personal liberty is concerned an applicant in applying for a writ of habeas corpus is entitled to avail himself of any technical defects which may invalidate the order which deprives him of his liberty.

B

[13] With clear principle of the law in mind, whether in this case the respondents had failed to strictly comply with statutory requirements under s. 15(1) of the PCA.

Applicant's Submission

C **[14]** Mr. Gobind referred to the order of police supervision dated 26 August 2016 issued by the Board and submitted that the order is flawed. His argument is that s. 15(1) of the PCA is a stand-alone section that requires the Board to act in accordance to the power given under the section. Section 15(1) provides as follows:

D

1) The Board may by order direct that any registered person named in the order shall be subject to the supervision of the police for any period not exceeding five years if the Board is satisfied that it is necessary that control and supervision be exercised over the registered person but that it is not necessary to detain him, and may renew any such order for a
E further period not exceeding five years at a time; and the registered person shall be conveyed under police escort to the State, district, mukim, town or village in which he is required to reside under subsection (2) (if any).

[15] The police supervision order which was served on the applicant reads as follows:

F BAHAWASANYA Lembaga Pencegahan Jenayah berpuashati bahawa penama telah didaftarkan oleh Pendaftar Penjenayah menurut subseksyen 12(1) Akta Pencegahan Jenayah 1959, dan menurut kuasa-kuasa yang diberi kepada Lembaga Pencegahan Jenayah oleh subseksyen 15(1) Akta yang sama, Lembaga Pencegahan Jenayah, adalah dengan ini memerintahkan supaya …

G

[16] Mr. Gobind argued that on the face of the order, the Board had clearly abused the requirement stipulated under s. 15(1) of the PCA. He submitted that the Board had merely referred to s. 15(1) in the order without stating its satisfaction that it is necessary that control and supervision be exercised over
H the applicant. Mr. Gobind agreed that in the first part of the order, the Board had satisfied itself that the applicant is the registered person under s. 12(1) of the PCA. He submitted that s. 12(1) is a separate section.

[17] However, s. 15(1) provides *inter alia* "if the Board is satisfied that it is necessary that control and supervision be exercised over the registered
I person but that it is not necessary to detain him". Section 15(1) is another section. He submitted that in view of that, the Board cannot just invoke

s. 15(1) without satisfying itself that it is necessary that control and supervision be exercised over the applicant. Mr. Gobind submitted that his argument is not about the issue of mere words used in the order. His argument is mainly on the substantial procedure under s. 15(1) that the Board must follow before the Board can make or issue the order against the applicant. It is the procedural requirement that the Board must apply its mind. In this case, the Board in merely invoking s. 15(1) in the Order without stating or indicating the fact that it had satisfied itself that it is necessary that control and supervision be exercised over the applicant and in issuing the police supervision order, the Board had not complied with the procedure under s. 15(1) of the PCA and committed an error of law. Mr. Gobind submitted that the police supervision order is not valid because the Board has abused s. 15(1) of the PCA. He submitted that on this ground alone the applicant's application for judicial review must be allowed and the order of police supervision on the applicant must be set aside.

Respondents' Submission

[18] The learned Federal Counsel acting for the respondents submitted that the issue raised by the applicant has no merit. In fact, she argued that the issue is non-starter because the para. 9 of the Deputy Chairman of the Board, Dato Mohamad Fazin bin Mahmud's affidavit dated 6 March 2017 has clearly stated that the Board was satisfied 'that it is necessary that control and supervision be exercised over the registered person but that it is not necessary to detain him:

> 9. Lembaga Pencegahan Jenayah telah berpuashati adalah perlu Perintah Pengawasan Polis dikenakan ke atas Pemohon bagi suatu pengawalan dan pengawasan dilaksanakan terhadap Pemohon tanpa perlu menahan Pemohon.

[19] It was Federal Counsel's submission that by the above explanation, it is clear that the procedure under s. 15(1) of the PCA has been complied with. She further argued that the order was not a statutory form but to notify the applicant of the decision of the Board which applicant has to comply. She referred to the case of *Davindran Achari a/l Thanabalan v. Pengerusi Lembaga Pencegahan Jenayah & Anor* (High Court Johor Bahru Application No: 44-22-08-2015). In that case, the issue was raised by the applicant that the order of detention made by the Prevention Crime Board was defective and *ultra vires* because the Board did not indicate for the reasons as stated in the detention order before the said order was made. The reasons as stated in the detention order spelt out that the applicant was to be detained in the interest of public order and for the prevention of crime. The learned High Court Judge agreed with the respondents' submission that the allegation that the words in the detention order were not the same as the word in sub-s. 19A of the said Act has no merit on the ground that the detention order is not a

statutory form but to notify the applicant of the decision of the Board which the applicant has to comply. The Board Chairman in his affidavit at para. 12 of encl. 6 has stated that 'Lembaga Pencegah Jenayah juga telah berpuashati membuat kesimpulan bahawa tahanan ke atas pemohon adalah perlu demi kepentingan awam dan pencegahan jenayah'. The court found that if at all there was discrepancy between the wordings in the Act and that of the words in the order, it does not show that the Board has not adequately applied its mind to the desirability of detaining the applicant and therefore does not invalidate the order issued.

[20] Learned Federal Counsel also referred to the case of *Govalan Arujuna v. Pengerusi Lembaga Pencegahan Jenayah & Ors* [2016] 1 CLJ 772. The issue in *Govalan*'s case is similar to the issue raised in the present case. Govalan, the applicant, submitted that there is non-compliance with s. 15(1) as the supervision order did not specify the words that the Prevention of Crime Board "is satisfied that it is necessary that control and supervision be exercised over the registered person" but instead the supervision order included the words "Lembaga Pencegahan Jenayah berpuas hati penama telah didaftarkan oleh Pendaftar Penjenayah menurut s. 12(1) APJ". The applicant's contention that the supervision order is defective is not tenable. In the first place, the PCA does not stipulate that the supervision order issued by the Board must contain certain prescribed words or be in any particular form. It cannot therefore, on this basis, be deemed to be invalid.

[21] The High Court held that:

> The PCA does not stipulate that the Supervision Order issued by the Board must contain certain prescribed words or be in any particular form. In the instant case, the prerequisite 'it is necessary that control and supervision be exercised over the registered person' did not add much to the contents of the Supervision Order, if at all. It was plainly superfluous. By issuing the Supervision Order, it was patently obvious that the Board must have been satisfied that a Supervision Order should be made. It is incontrovertible that the very essence of the Supervision Order, manifest as it is to all and sundry, is to direct police supervision of the registered person. The title of the document itself is 'Perintah Pengawasan Polis Di Bawah Seksyen 15'. The non-inclusion of such words could not be justifiably characterised as a defect and neither could the contents of the Supervision Order be said to be lacking in clarity or any material particular to such a degree that affected the rights of the applicant in any manner deemed to be detrimental. There was no procedural non-compliance in relation to the contents of the Supervision Order. (paras 18, 29 & 30)

[22] Therefore, based on the above cited cases, it was the submission of the learned Federal Counsel that this same issue raised by the applicant has been dealt with and therefore, the applicant's application ought to be dismissed.

Opinion Of This Court

[23] Having heard the applicant's counsel and learned Federal Counsel's submissions I adjourned the decision to 26 July 2016.

[24] I have considered the applicant's application and agree with Mr. Gobind's submission on the point of law that he had raised. I agree that s. 15(1) is separate section of which the section provides for procedure to be followed before the Board could issue direction that the applicant as registered person under s. 12(1) of the PCA be ordered with police supervision order. I find the Board in invoking s. 15(1) of the PCA and ordered the applicant with police supervision order without satisfying itself of such requirement under s. 15(1) of the PCA is non-compliance of procedure.

[25] Based on that reason, the applicant's application is allowed. The order of police supervision is set aside and the applicant is released from the said police supervision order. My decision in allowing the applicant's application is explained in the following paragraphs of this judgment.

[26] Section 15(1) of the PCA says that "The Board may by order direct that any registered person named in the order shall be subject to the supervision of the police for any period not exceeding five years if the Board is satisfied that it is necessary that control and supervision be exercised over the registered person …". The word "The Board may by order direct" and the words "if the Board is satisfied" and reading it in its entire context of s. 15(1), in my considered opinion, means that the section requires the Board to exercise its discretion and must be satisfied that the applicant is the person in the opinion of the Board it is necessary that control and supervision be exercised over him. The literal meaning of the words used in s. 15(1) is that after the Board had satisfied itself, only then the Board may direct by order that the applicant shall be subject to police supervision.

[27] In this case the order says that "dan menurut kuasa-kuasa yang diberi kepada Lembaga Pencegahan Jenayah oleh sub-s. 15(1) Akta yang sama, Lembaga Pencegahan Jenayah, adalah dengan ini memerintahkan supaya …" The Order merely says that in exercise of the power given under sub-s. 15(1) of the Act. What the Board did was to import the whole of sub-s. 15(1) of the Act into the order and by that subsection from which its power derived, ordered the applicant to be subject to police supervision. I agree with Mr. Gobind that by doing that, the Board instead of complying with the procedure, the prerequisite of which require its application of mind, the Board had abused sub-s. 15(1) of the Act.

[28] In *Davindran Achari*'s case *(supra)* cited by Federal Counsel, the issue raised is non-compliance of procedure under s. 19A of the PCA which is different with s. 15(1) because s. 19A deals with detention order. Be that as it may, in that case, the court found that the respondents have complied with

procedure under that section. The order in that case says that 'Lembaga Pencegah Jenayah juga telah berpuashati membuat kesimpulan bahawa tahanan ke atas pemohon adalah perlu demi kepentingan awam dan pencegahan jenayah'. Despite the Board being satisfied itself, the issue raised was on how the Board had satisfied itself that the applicant to be detained for reason stated in the detention order before the said order was made. Section 19A *inter alia* contains the words "If it is satisfied that such detention is necessary in the interest of public order, public security or prevention of crime". The words in the order may appear to have some discrepancies or different from the words used in s. 19A, however, the court decided that if at all there was discrepancy between the wordings in the Act and that of the words in the order, it does not show that the Board has not adequately applied its mind to the desirability of detaining the applicant and therefore does not invalidate the order issued. I agree with the learned judge's view. The wording does not really matter as long as the Board had satisfied itself that the detention of the applicant is necessary for purpose of public order and prevention of crimes. The mere discrepancies in the order to that of s. 19A if any do not invalidate the Order issued.

[29] In this case Mr. Gobind contended that it is not his case whether the words used in the order of police supervision is the same with the words found in s. 15(1) of the PCA or not. In fact, even if it is not argued so by Mr. Gobind, I find, the learned judge in *Davindran Achari*'s case *(supra)* held that the Board had satisfied itself as stated in the order, therefore, any challenge on how the Board reached its satisfaction has no merit. In this case, the order did not at all state that the Board had satisfied itself. The learned Federal Counsel had earlier submitted that para. 9 of the Board Deputy Chairman affidavit had stated that he was satisfied therefore, it shows that he had exercise his mind and complied with the procedure under s. 15(1) of the PCA. If I were to accept the Board Deputy Chairman's affidavit, then what he says in the affidavit is in conflict with his statement in the order. In another way of saying, there is nothing mentioned in the order that he had satisfied himself as what he had stated in the affidavit. It is quite obvious that the explanation of the Board Deputy Chairman came later and I agree with Mr. Gobind that the affidavit cannot correct the order which was made earlier.

[30] For purpose of argument, surely, para. 9 of the affidavit is conflicting with the police supervision order issued by the Board. It had been held that even if the court would accept the appellant witness statement, the court must not lose sight of the words in the documents and the letters and must weigh the evidence in totality against the statement by the witness. The Federal Court in *Tindok Besar Estate Sdn Bhd v. Tinjar Co* [1979] 1 LNS 119; [1979] 2 MLJ 229 held that oral evidence must be weighed and assessed against the contemporaneous documents. The words of Lord Greene MR in *Yuill v. Yuill* [1945] P 15 at pp. 19-20:

> For myself, I would with respect feel somewhat safer to refer to and rely on the acts and deeds of a witness which are contemporaneous with the event and to draw the reasonable inferences from them than to believe his subsequent recollection or version of it, particularly if he is a witness with a purpose of his own to serve and if it did not account for the statements in his documents and writings …

(See also *Guan Teik Sdn Bhd v. Hj Mohd Noor Hj Yakob & Ors* [2000] 4 CLJ 324; [2000] 4 MLJ 433 and *Eastern & Oriental Hotel (1951) Sdn Bhd v. Ellarlous George Fernandez & Anor And Another Case* [1988] 2 CLJ 734; [1988] 1 CLJ (Rep) 50; [1989] 1 MLJ 35 – it is incumbent upon the court to look at all the surrounding factors and to weight and evaluate contemporaneous documents that may tend to establish the truth or otherwise).

[31] Therefore, when s. 15 of the Act stipulates that the Board must satisfy itself, and there is no indication in the order that the Board had done so and the fact that by invoking s. 15(1) of the Act into the order, it cannot be said or accepted that the Board had complied with s. 15(1) of the Act. I agree with Mr. Gobind that an act of importing the so called power under s. 15(1) of the Act into the order without following the strict requirement in exercising such power, the Board had clearly abused its power under s. 15(1) of the Act. Further, when the order itself did not show any indication that the Board had satisfied itself, the benefit of doubt must be decided in the applicant's favour that the Board did not do so. In view of this fact, I found the Board had not complied with the procedure and the non-compliance of procedure of s. 15(1) of the Act is subject to judicial review by this court.

[32] Learned Federal Counsel had earlier submitted that the same issue by the applicant regarding s. 15(1) of the Act has been decided in *Govalan Arujuna*'s case *(supra)*. The applicant's issue in that case is relating to the non-compliance with s. 15(1) as the supervision order did not specify the words that the Prevention of Crime Board "is satisfied that it is necessary that control and supervision be exercised over the registered person" but instead the supervision order included the words "Lembaga Pencegahan Jenayah berpuas hati penama telah didaftarkan oleh Pendaftar Penjenayah menurut s. 12(1) APJ". The applicant's contention is that the supervision order is defective is not tenable. The High Court held that the PCA does not stipulate that the supervision order issued by the Board must contain certain prescribed words or be in any particular form. In the instant case, the prerequisite 'it is necessary that control and supervision be exercised over the registered person' did not add much to the contents of the supervision order, if at all. It was plainly superfluous. By issuing the supervision order, it was patently obvious that the Board must have been satisfied that a supervision order should be made. It is incontrovertible that the very essence of the supervision order, manifest as it is to all and sundry, is to direct police supervision of the registered person.

[33] The court also held that the title of the document itself is 'Perintah Pengawasan Polis Di Bawah Seksyen 15'. The non-inclusion of such words could not be justifiably characterised as a defect and neither could the contents of the supervision order be said to be lacking in clarity or any material particular to such a degree that affected the rights of the applicant in any manner deemed to be detrimental. There was no procedural non-compliance in relation to the contents of the supervision order. (paras 18, 29 & 30)

[34] My view is that learned Federal Counsel had missed the point. Mr. Gobind did not argue from the perspective of words used in the order of police supervision. It is not about the clarity of words in the order or that PCA does not stipulate that the supervision order issued by the Board must contain certain prescribed words or be in any particular form. The learned judge held that the prerequisite 'it is necessary that control and supervision be exercised over the registered person' did not add much to the contents of the supervision order, if at all. It was plainly superfluous.

[35] In both *Davindran Achari*'s case *(supra)* and *Govalan Arujuna*'s case *(supra)*, the High Courts had relied on the case of *Chong Kim Loy v. Timbalan Menteri Dalam Negeri Malaysia & Anor* [1990] 1 CLJ 61; [1990] 1 CLJ (Rep) 731. Mr. Gobind submitted that in *Govalan Arujuna*'s case *(supra)* which is relevant, the learned High Court Judge did not refer to the whole paragraph in *Chong Kim Loy*'s case. He pointed that the learned judge had cited the said paragraph as follows:

> [18] The applicant's contention that the supervision order is defective is not tenable. In the first place, the PCA does not stipulate that the supervision order issued by the Board must contain certain prescribed words or be in any particular form. It cannot therefore on this basis be deemed to be invalid. In the case of *Chong Kim Loy v. Timbalan Menteri Dalam Negeri, Malaysia & Anor* [1990] 1 CLJ 61; [1990] 1 CLJ (Rep) 731, the application for a writ of *habeas corpus* to challenge the validity of a detention order under s. 6(1) of the Dangerous Drugs (Special Preventive Measure) Act 1985 was dismissed. The High Court dealt with the contention relevant to the instant case in the following manner:
>
> The fifth point taken on behalf of the applicant was this: it was submitted that the detention order made by the Minister under s. 6(1) against him is bad on its face. In particular, it was argued that under s. 6(1) the Minister might make a detention order against any person the subject of the report of an Inquiry Officer under s. 5(4) provided that he is satisfied as to two matters, namely, (a) that the person concerned has been or is associated with any activity relating to or involving the trafficking in dangerous drugs and (b) that it is necessary in the interest of public order that such person be detained for a period not exceeding two years. But it was said that the detention order made against the applicant made no reference as to (b) and it was accordingly contended that by reason of this omission, the same was bad on the face of it.

> *Now, nowhere in the Act is there any provision as to the form which the detention order should take. However, it is clear, that a written order properly authenticated by the Minister is essential before any lawful detention can be effected for the Act clearly contemplates the making of a document.*
>
> ...
>
> In the present case, I consider that the detention order notwithstanding the omission aforesaid complies with these requirements and I therefore fail to see how it could be said that it is thereby invalidated.

[36] Mr. Gobind contended that the full paragraph should have be cited and read as follows:

> Now, nowhere in the Act is there any provision as to the form which the detention order should take. However, it is clear, that a written order properly authenticated by the Minister is essential before any lawful detention can be effected for the Act clearly contemplates the making of a document. *It is however, I think essential that the detention order contain at least so much of the belief of the Minister in regard to a detainee as will inform him, in general terms of the reasons for his detention so as to enable him to exercise, as soon as reasonably possible, his right to make representation to an advisory board under s. 9(1).*

[37] Therefore, Mr. Gobind's point is that paragraph in *Chong Kim Loy*'s case marked in bold which was left out by the learned judge, seems to accept that it is essential that the detention order contain at least so much of the belief of the Minister in regard to a detainee as will inform him, in general terms of the reasons for his detention. Following *Chong Kim Loy*, similarly, it is essential that police supervision order on the applicant contain at least so much of the satisfaction of the Board to a detainee as will inform him, in general terms of the reasons for his detention so as to enable him to exercise, as soon as reasonably possible, his right to make representation to an advisory board.

[38] Therefore, it was Mr. Gobind submission that *Govalan Arujuna*'s case *(supra)*, can be distinguished. I agree with his submission on the ground that reading the whole paragraphs in *Chong Kim Loy*'s case *(supra)* it can be interpreted that although the PCA does not stipulate that the supervision order issued by the Board must contain certain prescribed words or be in any particular form but the order should contain at least so much of the belief of the Minister in regard to a detainee as will inform him, in general terms. In other word, similarly in this case, the order of police supervision should contain at least some indication what the Board has in mind.

[39] In the present case as the fact alluded earlier, the police supervision Order does not contain any indication that the Board had satisfied itself or show some indication that it had done so and comply with s. 15(1) of the Act. By importing s. 15(1) of the Act into the Order, in my considered opinion,

the Board had not exercise or follow the requirement stipulated in s. 15(1) of the Act. It is not about the PCA does not stipulate that the supervision order issued by the Board must contain certain prescribed words or be in any particular form.

[40] In *Davindran Achari*'s case *(supra)*, the learned judge had referred the full text of the same paragraph of the decision in *Chong Kim Loy*'s case *(supra)* and held that the Board had complied with s. 19A of the Act, however, there was discrepancy in the words used in the Order. The pertinent fact is that the learned judge found the Board had satisfied itself as stated in the Order. In *Govalan*'s case *(supra)*, the learned judge had also referred to *Chong Kim Loy*'s case *(supra)*, however in that case, the order issued by the Minister under s. 6(1) of the Dangerous Drugs (Special Preventive Measures) Act 1985, the Minister had stated- "I the Minister Of Home Affairs, being satisfied that it is necessary to make this order against the person whose name is mentioned below with a view to preventing him from carrying out any activities relating to or involving of dangerous drugs … Accordingly, in exercise of the power conferred upon me under s. 6(1) of the Act, I hereby direct by this order …". However, it was submitted that the detention order made by the Minister under s. 6(1) against him is bad on its face. In particular, it was argued that under s. 6(1) the Minister might make a detention order against any person the subject of the report of an inquiry officer under s. 5(4) provided that he is satisfied as to two matters, namely, (a) that the person concerned has been or is associated with any activity relating to or involving the trafficking in dangerous drugs and (b) that it is necessary in the interest of public order that such person be detained for a period not exceeding two years. But it was said that the detention order made against the applicant made no reference as to (b) and it was accordingly contended that by reason of this omission, the same was bad on the face of it.

[41] Therefore, the issue is premised on the no reference as to paragraph (b) which was contended that by reason of this omission, the same was bad on the face of it. The issue was rejected and Edgar Joseph Jr J held that the detention order notwithstanding the omission aforesaid complies with these requirements and I therefore fail to see how it could be said that it is thereby invalidated. The judge had the opinion that the omission to state that it is necessary in the interest of public order that such person be detained for a period not exceeding two years is not fatal. Again if we see the order in *Chong Kim Loy*'s case *(supra)*, the Minister had complied with the order when the words "being satisfied' is stated in the order except the order did not state para. (b) which could not be said that the order thereby invalidated. In my view, the fact in *Chong Kim Loy*'s case is different with the fact in *Govalan*'s case *(supra)* and can be distinguished.

[42] My conclusion is that the Board had failed to follow the requirement under s. 15(1) of the PCA that it must be satisfied that it is necessary that control and supervision be exercised over the applicant before it may order direct the applicant' named in the order shall be subject to the supervision of the police. The Board cannot by merely invoke s. 15(1) of the Act in the order without complying with the requirement stated in the Act otherwise the Board is seen to have abused the section itself or acted mechanically in making the order.

Decision Of The Court

[43] In view of the circumstances, the applicant's application is allowed and the police supervision order issued on the applicant is set aside.